

REMARKS

This preliminary amendment is submitted with a request for continued examination. Claims 1-22 and 24-26 are pending. Claim 23 was previously canceled. The Office Action rejects Claim 26 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 1, 4-5, 11-12, 15-16, 22, and 24-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. App. Pub. No. 2004/0128495 to Hensley ("Hensley") in view of U.S. Pat. No. 6,279,109 to Brundridge ("Brundridge"). Claims 2 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hensley in view of Brundridge and in further view of U.S. Pat. App. Pub. No. 2003/0074550 to Wilks et al. ("Wilks"). Claims 6 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hensley in view of Brundridge and further in view of U.S. Pat. No. 6,532,535 to Maffezzoni et al. ("Maffezzoni"). Claims 7-9 and 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hensley in view of Brundridge and further in view of U.S. Pat. No. 6,992,991 to Duske, Jr. et al. ("Duske"). Claims 3, 10, 14, and 21 are objected to as being dependent upon a rejected base claim, but are indicated as being allowable if rewritten in independent form.

Applicants appreciate the Examiner recognizing the patentability of the subject matter recited in Claims 3, 10, 14, and 21. By way of this response, Applicants have made clarifying amendments to several claims as set forth in the above listing of amended claims. These clarifying amendments are fully supported by the originally filed specification and no new matter has been added. In light of the amendments and subsequent remarks, Applicants respectfully submit that the claims are in condition for allowance.

The Rejection of Claim 26 under §101 is Overcome

Applicants have amended Claim 26 to be directed to a "computer program product comprising a computer-readable storage medium," as suggested by the Office. Applicants therefore respectfully submit that the rejection of Claim 26 under § 101 is overcome.

The Rejection of Independent Claims 1, 12, and 26 under §103(a) is Overcome

Amended independent Claim 12 is directed to a method comprising loading a single resident operating system. The method further comprises, during boot, determining whether the single resident operating system is intact but that a non-volatile read/write memory drive that is normally used to boot up to a functional graphical user interface (GUI) associated with the single resident operating system is corrupt. The method additionally comprises, in an instance in which it is determined that the single resident operating system is intact but the non-volatile read/write memory drive is corrupt, automatically swapping the corrupt non-volatile memory drive with a temporary volatile random access memory (RAM) drive under control of the single resident operating system to thereby enable the single resident operating system to complete the boot. Amended independent Claims 1 and 26 are directed to an apparatus and computer program product, respectively, and, although having their own respective scopes, recite features substantially similar to those of Claim 12 insofar as this discussion is concerned.

The Office alleges that the independent claims (Claims 1, 12, and 26) are unpatentable over the combination of Hensley and Brundridge. Applicants respectfully disagree, however, as the cited combination fails to teach or suggest each of the features of the independent claims.

More particularly, the Office alleges that Hensley teaches automatically swapping the non-volatile read/write memory drive with a temporary volatile RAM drive. It is apparent from the teachings of Hensley, however, that not only does Hensley not teach or suggest this feature, but Hensley explicitly teaches away from this feature.

Briefly, Hensley teaches altering an operating system to boot so as to run from a normally unsupported system device (NUSD). The OS kernel is loaded from a natively supported boot device and initialized. Device drivers for the NUSD are then loaded from the boot device and initialized. A bootswap device driver is also loaded and initialized. The bootswap device driver is operative to alter an OS data structure such that the NUSD is recognized as a system device upon completion of the boot sequence from the NUSD as a system drive. *See*, Abstract of Hensley.

It will be appreciated that Hensley explicitly teaches configuring the NUSD prior to load the OS kernel from the natively supported boot device and to load the bootswap device driver. As described in paragraph [0027] with respect to FIG. 3, a copy of the OS executable and

configuration files are stored on the NUSD. Paragraph [0035] further provides that the OS files on the NUSD “may be legal back-up copies of the computer’s primary OS.” Paragraph [0030] further states that “[w]hen BOOTSWAP.SYS is initialized, it retrieves the NUSD device identification information that was saved [in the configuration files located on the NUSD] in step 78.” Accordingly, it is quite plain from reading the disclosure of Hensley that in order to provide disaster recovery services allowing for booting from an NUSD, the NUSD must be pre-prepared through storage of OS and configuration files on the NUSD to be later used when needed for running the OS from the NUSD. *See, also*, FIGs. 2 and 3 and the description thereof in Hensley.

It will be appreciated that the independent claims recite automatically swapping the corrupt non-volatile memory drive with a temporary volatile random access memory (RAM) drive. The Office Action alleges that the NUSD of Hensley teaches the volatile RAM. However, the NUSD taught by Hensley cannot be volatile. In this regard, a volatile memory is well known to one having skill in the art to require power to maintain the stored information. Thus, if an apparatus implementing example embodiments of the claimed invention is powered off prior to booting the resident operating system, no information would be stored in the volatile memory. It will therefore be appreciated that Hensley requires that the NUSD be non-volatile to allow pre-storage of a backup copy of the OS and appropriate configuration files.

Moreover, Hensley cannot be modified through combination with any other reference to arrive at the embodiments of the invention claimed in the independent claims because Hensley would not function for its intended purpose if the NUSD was swapped for a volatile RAM. Accordingly, none of the other cited references cure the deficiencies of Hensley. Further, none of the other cited references, taken alone or in combination, teach or suggest each of the features of the independent claims. Applicants therefore respectfully submit that the rejection of the independent claims is overcome and the independent claims are in condition for allowance.

The Rejection of the Dependent Claims is Overcome

Because each of the dependent claims includes each of the recitations of a respective independent base claim, Applicants further submit that the dependent claims are patentably distinguishable from the cited references, taken alone or in combination, for at least those

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reasons discussed above. Accordingly, applicants respectfully submit that the rejections of the dependent claims are overcome and the dependent claims are in condition for allowance.

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CONCLUSION

In view of the amended claims and remarks presented above, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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